

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

EPIC GAMES, INC.,

Plaintiff, Counter-defendant,

APPLE INC.,

Defendant, Counterclaimant.

Case No. 4:20-cv-05640-YGR-TSH

**RESPONSES TO EPIC’S OBJECTIONS
TO SPECIAL MASTER RULINGS ON
APPLE INC.’S PRODUCTIONS OF RE-
REVIEWED PRIVILEGED
DOCUMENTS**

The Honorable Thomas S. Hixson
San Francisco Courthouse
Courtroom E - 15th Floor
450 Golden Gate Avenue
San Francisco, CA 94102

Dear Magistrate Judge Hixson,

Pursuant to section 4 of the Joint Stipulation and Order Approving Privilege Re-Review Protocol (Dkt. 1092) (the “Protocol”), Apple respectfully submits the following Responses to Epic’s Objections to certain of the Special Masters’ rulings on Apple’s productions of re-reviewed and privileged documents, produced to Epic in redacted form on May 3, 2025. We are submitting these documents for *in-camera* review contemporaneously with this filing.

Apple’s responses relate only to documents Apple believes are not already covered by Your Honor’s and Judge Gonzalez Rogers’ existing rulings on Apple’s privilege assertions in this post-judgment discovery. As previously noted, *see* Dkt. 1109, Apple reserves all rights as to documents affected by those rulings, including any post-judgment appellate rights.

Emails: PRIV-APL-EG 00199145, PRIV-APL-EG 00200170

PRIV-APL-EG_00199145 is an email exchange among Kyle Andeer (in-house counsel) and two non-lawyers, with several others cc'ed, including Sean Cameron (in-house counsel). The email concerns comments and feedback on a draft slide deck discussing issues related to Apple's compliance with the Digital Markets Act in the European Union. Epic agrees that Mr. Andeer's comments are properly redacted as legal advice, *see* Dkt. 1545, at 2, but objects to the redaction of an email from a non-lawyer providing feedback on the slide deck. The substance of the slide deck at issue is an outline of Apple's proposal to the European Commission for compliance with certain new requirements under the Digital Markets Act. A discussion among lawyers and non-lawyers regarding a slide deck outlining regulatory responses is an exchange for the primary purpose of soliciting, providing, and discussing legal advice, and is therefore privileged. *See United States v. Sanmina Corp.*, 968 F.3d 1107, 1116 (9th Cir. 2020).

PRIV-APL-EG_00200170 is an email from a non-lawyer to several recipients, most of whom are in-house counsel (Charles Paillard, Nina Haefele, Sean Cameron, Dave Lacy Kusters, Brendan McNamara, Ling Lew, Gail Elman, Alex Caminas, Martin Gudmundsson). The redacted content concerns a preview of the topic to be discussed at an upcoming meeting among the recipients regarding new regulatory requirements for external purchase links in the European Union. The recipients of the email and the content of the discussion indicate that the non-lawyer seeks legal advice on the topic for the meeting, thus rendering the redacted content privileged as a statement of an issue on which a non-lawyer intends to seek legal advice. *See In re Meta Healthcare Litig.*, 2024 WL 3381029, at *2 (N.D. Cal. July 10, 2024).

Direct Messages: PRIV-APL-EG 00202318, PRIV-APL-EG 00202371

PRIV-APL-EG_00202318 is a Slack direct message among several Apple employees, including Ling Lew (in-house counsel), regarding implementation issues for new App Store products and services being launched in response to new regulatory requirements. The redacted content consists of a question from a non-lawyer directed to Ms. Lew regarding the alignment and coordination of Apple's regulatory responses across different jurisdictions. Ms. Lew responds to that question and also notes information received from Sean Dillon (in-house counsel) regarding ongoing regulatory issues. The exchange is a request for legal advice and a response to that request from a lawyer. It is therefore privileged. *See Labbe v. Dometic Corp.*, 2023 WL 5672950, at *4 (E.D. Cal. Sept. 1, 2023); *United States v. ChevronTexaco Corp.*, 241 F. Supp. 2d 1065, 1076 (N.D. Cal. 2002).

Apple will produce PRIV-APL-EG_00202371 without redaction.

DATED: May 12, 2025

WEIL, GOTSHAL & MANGES LLP

By: /s/ Mark A. Perry

Counsel for Defendant Apple Inc.